

FEB 8 2007

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:

HOSPITALITY VENTURES/LA VISTA,  
a Georgia General Partnership,

Debtor.

Case No. 01-88200-PWB

Chapter 11

HOSPITALITY VENTURES/LA VISTA,  
a Georgia General Partnership,

Plaintiff,

vs.

Adversary No. 03-06596

HEARTWOOD 11, L.L.C., VESTA  
HOLDINGS, I, L.L.C., and VESTA  
HOLDINGS, INC.,

Defendants and  
Third-Party Plaintiffs,

vs.

DEKALB COUNTY, GEORGIA, and  
TOM SCOTT, in his official capacity  
as Tax Commissioner of DeKalb County,

Third-Party Defendants.

ORDER ON MOTION FOR RECONSIDERATION

The Third-Party Defendants (collectively referred to as "DeKalb County") have moved [149] for reconsideration of this Court's "Order Vacating January 10, 2006 Order; Opinion on Motions for Summary Judgment Relating to Issues in Third Party Complaint; and Order and

Notice of Trial” entered on January 4, 2007 [146]. DeKalb County renews its arguments that the Third-Party Defendants (collectively referred to as “Heartwood”) should not be allowed to proceed on their claim for unjust enrichment because it has not been properly pleaded in this proceeding and that Heartwood is estopped from contesting the value of the Debtor’s hotel that is the subject of the tax claim in dispute.

FED. R. CIV. P. 8, *applicable under* FED. R. BANKR. P. 7008, requires a “short and plain statement of the claim” and a “demand for judgment for the relief.” This short and plain statement need do no more than give a defendant “fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *E.g., Conley v. Gibson*, 355 U.S. 41, 47 (1957). “A complaint need not specify in detail the precise theory giving rise to recovery. All that is required is that the defendant be on notice as to the claim being asserted against him and the grounds on which it rests.” *E.g., Plumbers and Steamfitters Local No. 150 Pension Fund v. Vertex Constr. Co., Inc.*, 932 F.2d 1443, 1448 (11<sup>th</sup> Cir. 1991) (emphasis omitted) (quoting *Sams v. United Food & Comm'l Workers Int'l Union*, 866 F.2d 1380, 1384 (11th Cir.1989)). Furthermore, Rule 8(f) requires, “all pleadings shall be so construed as to do substantial justice.”

The Court is satisfied that Heartwood’s pleadings and the record in this proceeding meet these standards. Heartwood’s unjust enrichment claim is a legal theory that is fairly raised by the pleadings and the record in this case demonstrates that it has been argued and determined with fair notice to DeKalb County that it was before the Court. There is no basis for barring Heartwood’s assertion of the unjust enrichment remedy. Therefore, DeKalb County should not be entitled to summary judgment.

As DeKalb County points out, Heartwood has asserted in this proceeding that the

Debtor's hotel was worth \$6,178,700 and has produced evidence in support of that factual assertion in connection with its motion for summary judgment. The Debtor produced evidence to contradict that factual assertion, and the Court concluded that value was disputed. Heartwood obviously concluded that it could not sustain its factual position and agreed with the Debtor on a lower value. The Court rejects, again, the proposition that Heartwood is or could be estopped from proving the actual value of the hotel in these circumstances.

DeKalb County's motion for reconsideration is **DENIED**.

The Clerk is directed to serve copies of this Order on all attorneys of record in this adversary proceeding.

It is SO ORDERED this 8 day of February, 2007.



Paul W. Bonapfel  
United States Bankruptcy Judge